

MINUTES



REGULAR MEETING OF THE PLANNING COMMISSION, CITY OF HAYWARD

Council Chambers

Thursday, November 21, 2002, 7:30 P.M.

777 "B" Street, Hayward, CA 94541

MEETING

The regular meeting of the Hayward Planning Commission was called to order at 7:30 p.m. by Chairperson Bogue, followed by the Pledge of Allegiance.

ROLL CALL

Present: COMMISSIONERS Zermeno, McKillop, Sacks, Caveglia, Halliday, Thnay
CHAIRPERSON Bogue
Absent: COMMISSIONER None

Staff Members Present: Anderly, Camire, Conneely, Emura, Koonze, Looney

General Public Present: Approximately 75

PUBLIC COMMENT

AGENDA

1. Use Permit No. PL-2002-0122 and Variance No. PL-2002-0291 – Mark Wagter & Nitsa Zuppas (Applicants/Owners) – Request to Allow Live/Work Multi-Family Dwellings on the First Floor and a Variance to Allow Vehicles to Back Out (Forward Motion Required) of the Garage Onto "B" Street – The Property is Located at 628 B Street, Between Grand Street and BART, in the Central City-Commercial/"B" Street Special Design Streetcar (CC-C-SD-1) District
2. Tentative Parcel Map 7990 Including Variances to Property Widths – Thai Tran (Applicant/Owner) – Request to Subdivide Two Parcels, Approximately 18,000 ± Square Feet, into Three Residential Parcels, Each Approximately 6,000 Square Feet to Allow a Variance for the Reduction of Average Lot Widths – The Property is Located at 25209-25211 Soto Road on the Southwest Corner of Soto Road and Berry Avenue in a RSB6 (Single-Family Residential – 6,000 Square-Foot Minimum Lot Size) District
3. Continuation of Referral By The Planning Director: Administrative Use Permit No. PL-2002-0262 – Mark Thomas-Heart of the Bay Christian Center (Applicant/Owner) – Request to Convert an Existing Theater to a Religious Facility With Administrative Offices (Continued From 9/12/02) – The Property is Located at 24800 Hesperian Boulevard in a Neighborhood Commercial (CN) District

PUBLIC HEARINGS

1. Use Permit No. PL-2002-0122 and Variance No. PL-2002-0291 – Mark Wagter & Nitsa

Zuppas (Applicants/Owners) – Request to Allow Live/Work Multi-Family Dwellings on the First Floor and a Variance to Allow Vehicles to Back Out (Forward Motion Required) of the Garage Onto “B” Street – The Property is Located at 628 B Street, Between Grand Street and BART, in the Central City-Commercial/”B” Street Special Design Streetcar (CC-C-SD-1) District

Commissioner McKillop recused herself due to a conflict of interest.

Associate Planner Camire described the project proposed by the applicant/owners who would like to convert two existing warehouses into four live/work condominiums of which two will be in the front building and two the rear building. A Conditional Use Permit is required for first floor residential uses in the Central City Commercial District. The project is located in the B Street Special Design Streetcar District so it would also have to follow those guidelines as well. Staff is of the opinion that the front building should have more embellishment to fit into the neighborhood. This includes an awning over the front entrance to reflect the prominent porch feature found throughout the neighborhood. The project was reviewed informally by the Citizen Advisory Board, which found it acceptable as proposed. She explained another concern regarding the variance since staff believes backing onto B Street could be potentially hazardous. She noted that cars accelerate after reaching the top of the railroad track grade.

Commissioner Caveglia asked whether the garages in the homes on B Street back out.

Associate Planner Camire explained the Zoning Ordinance permits backing onto the street from single-family homes.

Commissioner Zermeño asked whether signage could be added to warn oncoming traffic.

Planning Manager Anderly indicated that it might be, however, another concern is vehicles backing onto “B” Street could stop the flow of traffic in the area.

Commissioner Thnay questioned whether staff had any suggestions as to the safety issues.

Chairperson Bogue opened the public hearing at 7:43 p.m.

Mark Wagter and Nitsa Zuppas, applicants, described the property as right on the property line. Mr. Wagter described the location as near between residential and commercial uses, making this an ideal in-fill project. This will be the answer for those who have a need for live-work space. The units will be massive, he said. He showed the proposed buildings and their plans. He asked for approval of the variance and then demonstrated what he believed to be the safety aspects of backing into traffic at this location relative to other residential locations within the downtown area. He then described the loft-residential codes in other cities, and then noted that vehicles can park in the courtyard and compared the project with the requirements for parking in a residential area.

Commissioner Halliday expressed her concerns about vehicles backing out onto B Street. She asked whether they considered putting the garage in the back.



Mr. Wagter explained that they did consider it but there wouldn't be enough space and the additional garages are necessary to make the project financially feasible.

Commissioner Halliday explained her concern with the proximity of the railroad track and the possibility of having to be stopped on the tracks.

Planning Manager Anderly noted that this conversion requires no parking so the parking requirement is met without the additional parking with the "B" Street garages.

Chairperson Bogue expressed his concern about the parking as well.

Commissioner Thnay asked about considering the first level for parking on the building in the rear.

Mr. Wagter then explained that the triangular shape of the building prevents it, as well as the cost involved in creating a living space above a garage.

Al Reynolds described the spur track next to the buildings saying that it should be considered for possible future use. He noted that the railroad track line running through the BART station is also not a main line and asked whether there would be fencing between the buildings and the tracks.

Mr. Wagter said the railroad representative explained that the spur tracks closest to the building have not been in use for years. He noted that the farthest tracks are a secondary line and have not been in use for several years because of other railroad projects in the area affecting the railroad route (Harder Road underpass).

Al Reynolds expressed concern that there might be a safety factor.

The public hearing was closed at 8:25 p.m.

Commissioner Caveglia moved, seconded by Commissioner Zermeño, to find the project categorically exempt from CEQA, approve the use permit and approve the variance application with findings that there are special circumstance because of the shape of the property; "that a strict application of the Zoning Ordinance does deprive such property of privileges enjoyed by other property in the vicinity. And that the variance would not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity. He then added that backing out would not be significant, and the project would be a plus to the neighborhood.

Commissioner Sacks commented that an exception should be made since there is no street parking in that area. She noted that it is usually the street parking that obscures the sight line for backing out, and pointed out that a car will back out few times during a day. She added that she would support the motion since she liked the project and was pleased with it. She then

congratulated the applicant on their vision for these buildings.

Commissioner Halliday added that the applicant did a very good job of explaining the project. She commented that this part of B Street isn't all that heavily traveled at this time. She said she would applaud their reusing these two buildings noting that the reality is there has to be some parking for the building's residents.

Commissioner Zermeño said that this is a very good thing, having lofts in downtown since it will bring more people downtown. He would support the motion as well.

Commissioner Thnay noted that it is a great design and a good idea. However, traffic figures for single-family homes of four units will generate 40 trips. This will be an impact on the area. He expressed concern for the potential for conflict and what it does in the area.

Chairperson Bogue expressed concerns about the backing situation. He added that this seems to be a fast section of B Street. As a rule, it is not a good situation. He pointed out that backing in is easier than backing out.

Commissioner Halliday asked whether other cars back out from property onto B Street. The applicant indicated that they do. She then discussed a possible condition requiring tenants to exit the garages and only move in a westerly direction to avoid backing all the way into eastbound lanes.

Development Review Services Engineer Gaber explained that it would be impossible to enforce this kind of a condition.

Assistant City Attorney Conneely explained that the remedy for violation of a condition is generally revoking a use permit. In this instance it would be difficult since the building would have been converted and occupied.

The motion carried by the following vote:

AYES:	COMMISSIONERS	Halliday, Sacks, Caveglia
	CHAIRPERSON	Bogue
NOES:	COMMISSIONER	Thnay
ABSENT:	None	
ABSTAIN:	McKillop	

2. Tentative Parcel Map 7990 Including Variances to Property Widths – Thai Tran (Applicant/Owner) – Request to Subdivide Two Parcels, Approximately 18,000 ± Square Feet, into Three Residential Parcels, Each Approximately 6,000 Square Feet to Allow a Variance for the Reduction of Average Lot Widths – The Property is Located at 25209-25211 Soto Road on the Southwest Corner of Soto Road and Berry Avenue in a RSB6 (Single-Family Residential – 6,000 Square-Foot Minimum Lot Size) District

Assistant Planner Koonze showed a number of photos of the property and plans of the



proposed project. He commented that the sheds would be removed. He noted that the City had just learned that there may be a septic tank on the site which would require removal and the property would have to be hooked up to the City lines since the improvements would be within City limits.

Commissioner McKillop commented on an item in the report, which said fruit trees to be preserved. She wondered what and where they were.

Assistant Planner Koonze noted that staff was asking to preserve the fig tree. Because of its size it would be protected by Tree Preservation Ordinance.

Chairperson Bogue asked about Lot 3 and the proposal to have its driveway next to house bedrooms.

Assistant Planner Koonze explained that the house shown on Parcel 3 was an example of what could be constructed and staff had yet to review a house proposal for that site. When a building permit was submitted to the City, staff would be sure to locate the proposed driveway along the east property line away from the adjacent home.

Planning Director Anderly noted that for trees on single family parcels to be protected by the new Tree Preservation Ordinance, a condition must be included prohibiting subsequent owners from destroying the trees on the site.

The public hearing was opened at 8:49 p.m.

Reinhold Koshmeider, a neighbor, said he was thoroughly against this proposal. He explained that the property used to be a farmhouse and that there are wells with seepage from leach lines. He noted that the plan to renovate the houses would leave only 45 feet on the backside and as such, they would lose the large fig tree. He noted that there were two septic tanks by the tree. He described a well between the two houses and noted that people have tried to live there. He asked that before any new construction, everything on the property should first be renovated. He noted that City inspectors have been to the property a number of times. He then appealed to the Commission not to let the variance go through before being brought back for reconsideration with renovation. He then talked about the houses and the architecture in the neighborhood.

Thieu Ton spoke briefly for the applicant and said they were trying to beautify the area with this project.

Ali Manseur said he was a previous tenant who was just evicted. He shared a number of photos noting problems with the buildings on the property. He said he and his family had lived there for 3 ½ years.

The public hearing was closed at 9:03 p.m.

Commissioner Caveglia asked about the issues brought forward versus the lot split and whether the Planning Commission had any authority in asking for conditions on the property to be brought up to code.

Assistant City Attorney Conneely said they had the authority to require the applicant to remedy any building code violations that exist on the property.

Commissioner Caveglia moved, seconded by Chairperson Bogue, to find the project categorically exempt from CEQA review; approve the tentative Parcel Map 7990 and the associated variances subject to the findings and conditions with additional conditions requiring the owner to remove the septic tank and leach field, as well as bringing the buildings up to code. He added a further condition to protect the fig tree and all the significant trees on the property.

The motion passed unanimously.

3. Continuation of a Referral By The Planning Director: Administrative Use Permit No. PL-2002-0262 – Mark Thomas-Heart of the Bay Christian Center (Applicant/Owner) – Request to Convert an Existing Theater to a Religious Facility With Administrative Offices (Continued From 9/12/02) – The Property is Located at 24800 Hesperian Boulevard in a Neighborhood Commercial (CN) District

Associate Planner Emura indicated that subsequent to the mailing of the meeting notice, the Department received two calls one in support and one against. The negative call cited the increased traffic in the area as well as the loss of revenue to the City by not having a commercial building at this location. He added that the applicant would ask for changes to some of the conditions, he asked for staff to have input on these prior to a vote.

Commissioner Halliday asked specifically about condition 34, and the 31 trees that were severely pruned and were required to be replaced with 24" box trees.

Associate Planner Emura commented that the damage was done by the previous owner who never complied with condition of replacement.

The public hearing was opened at 9:12 p.m.

Pastor Mark Thomas said they are excited about this new home for their church. He said he had asked that only those members who felt they must speak, to do so. He then thanked the Commission for the prior vote. He then described the conditions to which they had taken exception, and the problems with them. He noted that condition 11 had been satisfied through the renderings submitted; Condition 14 requiring a masonry wall should be changed to either a wooden wall, which would be a small percentage of the cost of a masonry wall. He asked that Condition 25, regarding the driveway reconstruction, be considered for future changes, and that a modification be made of Condition 34 requiring all 31 existing trees be replaced. He said the Church had hired a certified arborist to check the trees and agreed that 24 of the trees were



dead; the seven remaining trees might be redeemable. He asked that, if the condition were not modified, the Church would be allowed to phase in the plantings since the cost of replacing 31 trees with 24" box trees would be prohibitive. He then noted that the property was 1,800 square feet, and not 1,600 as described in the initial study.

Jim Swanson, speaking on behalf of the applicant, described a few more changes they would like that were asked for the conditions. He also showed the plans for compliance with several of the conditions, like Condition 13, the pedestrian walkway to Hesperian. He then suggested that they would like to comply with Condition 14 by erecting either a wooden fence or a decorative metal lattice fence that would be approved by the Planning Department. He showed the proposed decorative paving at the driveway entry off of Hesperian as required in Condition 22, and said they would agree to the remaining conditions as well.

Al Reynolds spoke against the church going into this location because of the resulting lack of revenue to the City. He asked for conditions to be required for the Church to prove that their economic forecast is correct. He also commented that the driveways should be wider.

Roy Gordon explained that any concerns regarding traffic should be alleviated by the understanding that any other commercial enterprise at this location would greatly increase traffic at peak hours, whereas the Church only generates greater traffic on Sundays and possibly in the evenings. He commented that there are too many long-term buildings vacant on Hesperian, most of them commercial buildings. He added that at least this would fill one building and bring more people into the community.

Al Nunes, of the "Hollow Leg," discussed his bar, which is located next to the new church property. He then described all of the liquor establishments in the area and commented that this would be a very inappropriate place to locate a church. He noted that it is a very commercial area and wondered, why, if a church was already established in the area, locating a bar next to it would be forbidden. He suggested that if you cannot locate a bar next to a church, perhaps you should not be able to locate a church next to a bar.

Chairperson Bogue asked staff whether it was legal to place a church next to alcohol establishments.

Planning Manager Anderly did note that schools next to liquor establishments were not permitted and cited Chabot College across the street or a day care center at a church. She noted that if an existing liquor establishment closed and a new one did not open up within six months, a liquor establishment would not be able to locate within 500 feet of a Church or school.

The public hearing was closed at 9:36 p.m.

Commissioner Thnay asked questions regarding Conditions 22 and 25, and wondered whether

they were consistent with previous applications.

Associate Planner Emura said they were and also discussed the request for changes for Condition 11. He said staff had never received color samples and would like to reserve the right to see samples to make sure the building will blend into the location. He explained that Condition 14 requiring the masonry wall was added when staff thought there were residential units behind the site. He agreed that other decorative fencing would be okay. He said staff would agree to modify Condition 25 to read any "future drive-way". Also Condition 34, they would leave the opportunity for corrective pruning on the trees to reestablish themselves. He emphasized that 24 trees need to be removed. He thought phasing them in as time and money permits would be difficult since the reason for the trees is aesthetics. Staff felt it would be appropriate to do it all at once. He added that nice landscaping will help revitalize the area.

Commissioner Halliday then moved, seconded by Commissioner Sacks to adopt the negative declaration, approve the Administrative Use Permit with findings and conditions of approval, with amendments to the conditions to include: 14., to some other type of fencing, wood or metal, subject to staff approval; Condition 25. to read, "any future driveways;" 34. to include an evaluation of the 31 trees on the site by the City Landscape Architect for viability and those no longer viable are to be replaced with 24" box trees.

Chairperson Bogue emphasized that this location should be used for commercial use. For that reason he would not support the motion.

Commissioner Zermeño agreed that this project hinders Hayward's ability to grow.

Commissioner Halliday asked the Assistant City Attorney whether the Commission had not already approved that application.

Assistant City Attorney Conneely said the Commission had not approved the application. They had merely agreed to ask staff to do the environmental analysis and come back with findings for approval.

Commissioner Halliday said she might agree with Chairperson Bogue if the property were owned by the City or in a redevelopment area. Since a church is permitted in this zoning district, she thought it would be appropriate. It would not fit into another zoning district. Since it is larger than most, it would not belong in a residential district. She said the Church works well on this property. Services will not interfere and create more traffic during commute times, or anything.

Commissioner McKillop said she had looked at the building and its history. She would prefer to see the lot developed and felt this was appropriate at this time.

Commissioner Sacks said if the City of Hayward had a commercial building going in, she would support it. She then read the portion of the RLUIPA law, which precludes local agencies, absent a compelling government interest, to vote against the motion. She noted that given the situation in that area, she could find no "compelling government interest," so she would support the motion.



Commissioner Thnay commented that quite often when vacant property is noted, the City comes up with hopes for a huge bookstore or other vague proposal. He commented on the number of vacant buildings in this area, including Hesperian House, etc., which have all been closed for a long time. By agreeing to the proposed Church at this location, he said, it will bring many benefits to the City. He would support the motion.

The motion carried by the following vote:

AYES:	COMMISSIONERS	Halliday, Thnay, Sacks,
		McKillop
NOES:	COMMISSIONER	Caveglia, Zermeno
	CHAIRPERSON	Bogue
ABSENT:	None	
ABSTAIN:	None	

ADDITIONAL MATTERS

4. Oral Report on Planning and Zoning Matters

Planning Manager Anderly reminded Commissioners of the two meetings in December on the 5th and 19th with a special event on December 12th.

Commissioner McKillop noted her involvement with the "Light Up the Season" event on December 5th.

Planning Manager Anderly indicated that efforts would be made to cancel the December 5 meeting.

5. Commissioners' Announcements, Referrals

Commissioner Sacks commented on the irony of the bar owner noting that with all of the bars in the area on Mission, a church was still allowed to locate there, whereas the reverse would probably not be true.

APPROVAL OF MINUTES

Commissioner Thnay noted that a comment he made on page five of the agenda was to read, "dogs" not "ducks." The minutes were then approved with this correction.

- November 7, 2002

ADJOURNMENT

The meeting was adjourned by Chairperson Bogue at 10:03 p.m.

APPROVED:

Barbara Sacks, Secretary
Planning Commission

ATTEST:

Edith Looney
Commission Secretary